THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 6420 of 2006

Oral order:

The petitioner is presently working with the respondents-BSNL as Telecom Mechanic. He claims that he joined the respondents-BSNL as Casual Mazdoor on 01.07.1979 when he was aged about 15 years. At the time of regularization of his services, the petitioner states that the respondents-BSNL excluded the service rendered by him prior to his attaining the age of 18 years, which is prescribed for appointment as Regular Mazdoor, i.e. the period from 01.07.1979 to 04.08.1982, from counting, for any purpose. Assailing the said action of the respondents-BSNL, the petitioner filed O.A. No. 1418 of 2000 before the Central Administrative Tribunal, Hyderabad, which by order dated 06.10.2000, dismissed the same.

The petitioner states that a similarly situated person, against the order dated 15.01.1997, passed by the Central Administrative Tribunal, Hyderabad, dismissing his O.A. No. 406 of 1997, filed writ petition in W.P. No. 22283 of 1997, and a Division Bench of this Court, by order dated 23.03.2004, allowed the writ petition and set aside the order dated 15.01.1997 passed by the Central Administrative Tribunal, Hyderabad, in O.A. No. 406 of 1997 and directed the respondents therein to take into consideration the period of service for which the petitioner had worked during his minority, for all benefits accruing under the relevant scheme. Pursuant to the said order of the Division Bench, it appears that the petitioner made representation through the BSNL Employees Union to the respondents requesting them to count the period of service rendered by the petitioner before his attaining the

minimum age prescribed for appointment as regular mazdoor, for any purpose, but the same, by order dated 19.12.2005 was rejected by the respondents holding that the benefit of the order in W.P. No. 22283 of 1997 cannot be extended to the petitioner as he is not party to the same. Hence, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that even though the petitioner did not file any writ petition assailing the order dated 06.10.2000, passed by the Central Administrative Tribunal, Hyderabad, dismissing O.A. No. 1418 of 2000 filed by him, but having regard to the fact that a Division Bench of this Court by order dated 23.03.2004 allowed writ petition in W.P. No. 22283 of 1997, setting aside the order dated 15.01.1997, passed by the Central Administrative Tribunal, Hyderabad in O.A. No. 406 of 1997, filed by similarly situated person, he is entitled for counting of the service rendered by him prior to his attaining the minimum age prescribed, for any purpose, and the action of the respondents in rejecting the request of the employees, by reason of the order dated 19.12.2005, impugned in this writ petition, is illegal and arbitrary.

The respondents filed counter. The learned Standing Counsel for the respondents-BSNL reiterating the counter averments submitted the services of the petitioner were regularized on 01.04.1993, and he approached the Court after lapse of 13 years, and as such, the writ petition has to be dismissed on the ground of delay. He submitted that the DG, Telecom, New Delhi, vide letter dated 17.12.1986 that recruitment of casual mazdoors below the age of 18 years being irregular, the service rendered by such casual mazdoor before the age of majority should not be counted for any purpose. Therefore, the service rendered by the petitioner as casual mazdoor before his attaining the age of 18 years, was not regularized and counted for any

purpose. He further submitted that O.A. No. 1418 of 2000, filed by the petitioner assailing the action of the respondents-BSNL in not counting the service rendered by him before he attained majority, was dismissed by the Central Administrative Tribunal, Hyderabad, by order dated 06.10.2000, which became final, as the petitioner did not file any writ petition assailing the same. Hence, he prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-BSNL.

There is no doubt that O.A. No. 406 of 1997, filed by the petitioner assailing the action of the respondents in not counting the service rendered by him prior to his attaining the minimum prescribed age appointment as regular mazdoor, for any purpose, was dismissed by the Central Administrative Tribunal, Hyderabad, vide order dated 15.01.1997, and the petitioner did not file any writ petition assailing the same, but the fact remains, the writ petition in W.P. No. 22283 of 1997, filed by a similarly placed employee assailing the order dated 15.01.1997 of the Central Administrative Tribunal, Hyderabad, dismissing the O.A. in O.A. No. 406 of 1997, was allowed by a Division Bench of this Court by order dated 23.03.2004. The Division Bench of this Court, considered similar issue as is involved in this writ petition, in the light of the arguments advanced, and held as follows:

> In the present case, the writ petitioner was aged about 17 years old by the time he was engaged. It is nobody's case that he did not perform the job what was assigned to him and he did not perform the job as was being performed by others along with him who were majors.
>
> Therefore, we do not find any reason on the basis of which a person's service could not be entertained for the purposes of benefits under the scheme, if the service rendered by him was pertaining to the period when such a person was a minor. The minor could not be put to forced labour even under the provisions of Constitution of India, and a reference to Article 23 may be given in that connection. Even under the directive principles of Constitution, Article 39 lays down as follows:
>
> Article 39: - Certain principles of policy to be followed by the State: - The State shall, in particular, direct its policy towards securing –
>
> (e): that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity

to enter avocations unsuited to their age or strength;

(f): that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

In any case, we do not find any reasonable ground for making a distinction between a person who was a major and a person who was not a major, when both of them were put to same job by the respondents.

Pursuant to the above order of the Division Bench, it appears that the petitioner through BSNL Employees Union made representation to the respondents for counting the service rendered by him before attaining the minimum prescribed age for any purpose, but the respondents, by reason of the order dated 19.12.2005 rejected the request of the petitioner on the ground that the petitioner is not a party to the said writ petition.

There is no doubt that the petitioner is not a party to the writ petition in W.P. No. 22283 of 1997, filed by another similarly situated employee, but the fact remains, the order dated 23.03.2004 of the Division Bench of this Court in the said writ petition, attained finality, for the respondents-BSNL did not file any appeal before the Supreme Court. The Division Bench of this Court, as extracted supra, did not find any reasonable ground for the respondents to make a distinction between a person who was a major and a person who was not a major, and more so when both of them were put to same job. In that view of the matter, I am of the considered opinion that the respondents by rejecting the request of the petitioner for counting of the service rendered by him prior to his attaining the minimum age prescribed for appointment, by reason of the order impugned in the writ petition, have violated the equality clause enshrined in Article 14 of the Constitution of India, stating that since the petitioner is not a party to the said writ petition, he is not entitled to the benefit thereof, and more so when the petitioner as a minor performed the works entrusted to him on par with other majors.

In the above view of the matter, the impugned order dated 19.12.2005, issued by the respondents, cannot be sustained, and the same is accordingly set aside. The respondents are directed to take into consideration the period of service for which the petitioner had worked during his minority, for all benefits accruing under the relevant scheme.

Accordingly, the writ petition is allowed. No costs.

_____

N.V. RAMANA, J.

Date: 16th November, 2007.
KSR